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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,259	11/10/2003	Steven F. Bierman	VINTL.106C1C1	3207

20995 7590 05/26/2005

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EXAMINER

NORMAN, MARC E

ART UNIT PAPER NUMBER

3744

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/705,259

Applicant(s)

BIERMAN ET AL.

Examiner

Marc E. Norman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,6-8 and 10-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-8 and 10-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/1/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-3, 6-8, and 10-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutson.

As per claims 1, 7, and 8, Hutson teaches an anchoring system for a medical article 11 comprising retainer 10 having a curvilinear base 17 and a curvilinear cover 18 having an adhesive material 32 (See column 3, lines 39-43 regarding liner 32 being made of rubber or other textured material that frictionally engages (i.e., adheres to) the medical article. See also attached Merriam Webster Dictionary definition of “adhesive” as “tending to adhere” and of “adhere” including “to hold fast... by... grasping”), the cover being pivotally coupled to the base to define a channel when the cover lies in a closed position (Figure 4), the channel configured to

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receive the medical article and sized as large as the article, the adhesive material being disposed upon the channel such that it lies in contact with the article when the cover is closed and inhibits motion of the article relative to the container (column 3, lines 39-42). Hutson does not teach the adhesive material 32 being a “spot,” per se. However, this is simply a matter of the size of the adhesive material. A “spot” would functionally act the same way as the liner 32 of Hutson, and would have been an obvious design alternative to one of ordinary skill in the art at the time the invention was made to apply to the retainer of Hutson for the purpose of retaining the medical article in the clamp.

As per claim 2, Hutson further teaches a retainer member (end portion of cover 18) projecting into the channel to engage a portion of the medical article. The friction caused by such engagement helps inhibit axial movement of the article.

As per claim 3, Hutson does not teach the channel being configured to receive a branching site. However, branching site retainers are old and well known (see for example the Abrahamson reference supplied by Applicant). It would similarly have been obvious to one of ordinary skill in the art at the time the invention was made to apply the adhesive retainer of Hutson at a branch site for the purpose of inhibiting movement of the article at that location.

As per claim 6, adhesive liner 32 exhibits a transverse force to bias the article against the opposite side of the retainer.

As per claims 10, 13, 17, Hutson further teaches latching mechanism (26-28).

As per claims 11 and 12, see discussion of claims 1, 7, and 8, above. Hutson further teaches adhesive anchoring patch 72.

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As per claims 14 and 19, Hutson teaches a portion of base 17 extending past cover 18 (Figures 4 and 5).

As per claims 15 and 20, Hutson teaches a receptacle in the base (inner portion of tooth 26) and cover projection (teeth 27 and 28) engaging when the retainer is closed (Figures 4 and 5).

As per claims 16 and 21, Hutson does not teach the width of the channel varying in a lateral direction along the length of the channel. However, medical retainers with variable diameters are old and well-known (see for example the Kvalo reference supplied by Applicant). It would have been obvious to one of ordinary skill in the art at the time the invention was made to similarly alter the diameter of the clamp of Hutson for the purpose of retaining an article whose diameter itself changes.

As per claim 18, Hutson teaches adhesive liner 32 being within the channel that juxtaposes the base.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc E. Norman whose telephone number is 571-272-4812. The examiner can normally be reached on Mon.-Fri., 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cheryl Tyler can be reached on 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MN



MARC NORMAN
PRIMARY EXAMINER